

REMARKS

The foregoing amendment and the remarks which follow are responsive to the Office Action dated October 20, 2006. In this amendment, claims 1-4 and 6-20 have been amended and claim 5 has been cancelled. No new matter has been added.

Priority Claim

Applicant thanks the Examiner for pointing out the lack of copendency with parent application Serial No. 09/938,846. Applicant has filed a petition under 37 1.137(b) to revive the '846 application for the purpose of establishing copendency. Applicant will notify the Examiner promptly upon receipt of a final decision on this petition.

Rejection Under 35 U.S.C. §112

Claim 6 was rejected under 35 U.S.C. §112, second paragraph, on grounds that the word "substantially" is indefinite as used in claim 6. As presently amended, claim 6 recites that the DFMO comprises at least 90% by weight of the D isomer of DFSO. This amended language is believed to be quite definite and is fully supported by the specification, including the first full paragraph on page 12.

In view of the amendment to claim 6, the stated rejection under 35 U.S.C. 112 is moot and withdrawal of this stated rejection is respectfully requested.

Rejections Under 35 U.S.C. §102

In the office action, claims 1-20 were rejected under 35 U.S.C. §102 as being anticipated by United States Patent Application Publication 2002/0137797 which is the

publication of parent application Serial No. 09/938,846. As pointed out above, Applicant has responded to this rejection by filing a petition to perfect the priority claim in this continuation application. Upon granting of this petition, United States Patent Application Publication 2002/0137797 will not longer constitute prior art to the instant application.

Also in the office action, claims 1 and 3-20 were rejected as being anticipated by United States Patent No. 4,330,559 (Bey et al.). As the Examiner recognizes, Bey et al. describes treatments for benign prostatic hypertrophy. Bey et al. does not describe or suggest any use of DMFO to treat prostate cancer. As presently amended, all claims are directed to methods for treatment of prostate cancer in human subjects by administration of a lyposomal preparation of DMSO. These amended claims are fully supported by the originally filed specification including the discussion of lyposomal dosage preparations at pages 26-27. Thus, the currently amended claims are not anticipated or obvious over Bey et al. and withdrawal of this rejection is respectfully requested.

Rejections Under 35 U.S.C. §103

In the office action, claims 1, 2 and 5-20 were rejected under 35 U.S.C. 103 as being obvious over WO98/25603 (Weis et al.) Weis et al. proposes the use of DMFO to treat a wide variety of cancers. Weis et al. does not, however, describe the treatment of prostate cancer by administration of a liposomal DMFO preparation in an amount and duration sufficient to decrease the spermine and/or spermidine levels in the prostate, as recited in amended dependent claim 1. Thus, amended claim 1 (and dependent claims 2-4 and 6-20) are believed to be patentable over Weis et al. and all other prior art of record.

Also in the office action, original claims 1-5 and 7-20 were rejected as being obvious over the combination of Messing et al. in view of Meyskens et al. and Mohan et al. However, these cited references are not believed to disclose the use of a lyposomal

preparation of DFMO for the treatment of prostate cancer as recited in amended claim 1. Accordingly, amended claim 1 (and dependent claims 2-4 and 6-20) are also believed to be allowable over the combination of Messing et al. in view of Meyskens et al. and Mohan et al.

Conclusion

Upon granting of the petition filed to perfect the priority claim in this case, all pending claims (1-4 and 6-20) will be in condition for allowance. Accordingly, reconsideration and timely issuance of a notice of allowance is earnestly solicited.

The Examiner is invited to telephone Applicant's undersigned counsel to discuss any further measures that may be taken to facilitate issuance of a Notice of Allowance on this application.

Respectfully submitted,

STOUT, UXA, BUYAN & MULLINS, LLP

A handwritten signature in black ink, appearing to read 'R. D. Buyan', is written over a horizontal line.

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